THERMAL EXPLORATION, INC.

IBLA 91-159 Decided March 31, 1997

Appeal from a Decision of the Wyoming State Office, Bureau of Land Management, terminating Federal oil and gas lease WYW-115711.

Reversed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Under 43 C.F.R. § 3108.2-1 (1990), after an authorized officer rendered a decision finding that an oil and gas lessee had cured a deficiency in a lease rental payment and payment was accepted, the lease did not terminate by operation of law.

APPEARANCES: William E. Johnson, Seattle, Washington, Senior Lease Analyst, for Thermal Exploration, Inc.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Thermal Exploration, Inc. (Thermal), has appealed from a Decision of the Wyoming State Office, Bureau of Land Management (BLM), issued December 20, 1990, finding that oil and gas lease WYW-115711 terminated by operation of law, because Thermal failed to pay rental on or before the lease anniversary date in 1989. The Decision also informed Thermal of terms under which it might qualify for lease reinstatement.

The record shows that on May 15, 1989, Thermal paid $280 rental for the then-newly assigned 280-acre lease here at issue, which was derived from a previous larger lease for which annual was charged at $1.50 per acre. On August 21, 1989, BLM notified Thermal the lease had terminated by operation of law because the required annual rental payment was not received on or before the anniversary date of the lease, June 1, 1989, pursuant to 30 U.S.C. § 188(b) (1994). Thermal responded that it had relied on an official communication indicating rental had been reduced to $1 an acre for the lease when making the rental payment, and enclosed a copy of a courtesy notice for rent due for the prior lease, with an accompanying letter from the Minerals Management Service (MMS), the designated payee, explaining that certain leases were entitled to a reduced rental, subject to individual notification.

On September 29, 1989, BLM accepted the explanation provided by Thermal and vacated the termination Decision of August 21, 1989; the 1989

BLM Decision recites that, upon receipt of the explanation provided by Thermal, BLM had referred Thermal's check for additional rental to MMS, where the check was accepted. The Decision then stated that "our August termination notice is hereby vacated. Your lease is now in good standing and will remain in full force and effect through its normal expiration date of May 1, 1993, unless otherwise extended." Nevertheless, on December 20, 1990, BLM issued the Decision on appeal, finding that the Decision issued on September 29, 1989, which allowed Thermal to pay additional rental owed, had created "a cloud on the title for this lease." Appellant argues that the Board should vacate this Decision because the facts of the case warrant reinstatement of its lease pursuant to 43 C.F.R. § 3108.2-1(b) (1990).

[1] The cited regulation provides, in pertinent part, that when a lease "payment is deficient [and] the amount of payment made was determined in accordance with * * * [a] decision rendered by the authorized officer, * * * such lease shall not have automatically terminated." Given the facts of this case, it is clear that this regulatory provision does, as Thermal contends, provide a basis for relief from the Decision issued by BLM in 1990. The regulation specifically provides that when an authorized officer renders a decision allowing an additional payment, as was done in 1989 by BLM, that action is final; thereafter, the "lease shall not have automatically terminated." No explanation for the finding made by BLM in 1990 that the Decision issued in 1989 created a cloud on the lease title is given, nor, in view of the savings provision of 43 C.F.R. § 3108.2-1(b) (1990), is any explanation apparent. Under the rule provided, Thermal correctly contends that lease WYW-115711 did not terminate, because the authorized officer of BLM rendered a Decision in 1989 that permitted Thermal to cure a deficient payment, which was accepted by MMS.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision of the Wyoming State Office is reversed.

Gail M. Frazier
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge